R to AR
Cr. Br

GA 3390/99 (02)

XII-188/(Jail)
C.J.P.R.—5,000-9-81

CF0000062113

Division Bench (Criminal)

APPEAL OF PRISONER

No. 61 Name रतु दास

Father's name हरिया कोरवा

Residence देवडोंड (खैरागढ़) Age 45 वर्ष

Sentenced to आजीवन कारावास on 25-11-99

Under section 302 IPC by द्वि. अ. जे. वी. राजपुर नगर

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 25-11-99

2 Date of which copy received 26.11.99

3 Date on which Appeal sent 26.11.99

4 Whether the prisoner wishes to be represented or not – Yes/No. Yes

अपीलार्थी से निर्देश हुई माननीय उच्च न्यायालय से वकील नियुक्त करने हेतु।

अपीलार्थी

No. 61 Name रतु दास

Continued in 28-5-99 Jail उप जेल राजपुर नगर

No. 746 dated 26/11/99 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE माननीय मुख्य न्यायिक मजिस्ट्रेट उच्च न्यायालय जबलपुर म.प्र.

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

रवाना - जिला एवं सत्र न्यायालय 1 प्रति

SUPERINTENDENT

Superintendent Central/District Sub Jail Rajpur nagar

Date of receipt in C. J. M.'S Office

Date of receipt of record to accompany Memo of Appeal of the Appeliate Court.

No. Dated 198

Forwarded to the

C.J.Magistrate

Date of receipt in Appliate Court

HIGH COURT OF MADHYA PRADESH
JABALPUR.
10 DEC 1999
Reg. No. 53
Receipt Clerk
High Court, Jabalpur

(P.T.O.)

XI-HC-78

(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.3390/99 **सन् ~~200~~**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

27-11-2006

Mr. J.D. Bajpayee, counsel for the appellant.

Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Today, this appeal has been posted for hearing on M.(Cri.)P. No.2477/2006, application for suspension of sentence and grant of bail. At the request of counsel for the parties, the appeal is being disposed of finally, as the appeal depends upon the evidence of only one witness namely, PW-3 Somari Bai and the accused is in custody since 1999.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 25-11-1999 passed by the Additional Sessions Judge, Jashpurnagar, in Sessions Trial No.117/99, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life and pay a fine of Rs.2,000/-, in default of payment of fine to further undergo SI. for two years.

The case of the prosecution, in brief, is that on 25-5-1999 at about 9 p.m. the accused went to the house of his brother namely, Sukhuram and asked as to where he had gone, because in his absence wild animals have

P.T.O.

आदेश पत्रक (पूर्वानुबद्ध)

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eaten two goats and thereafter, in the courtyard of the house, both the brothers started quarrelling. In that process Raturam assaulted Sukhuram with Lathi on his head and stomach. At that time, Somari Bai, wife of the deceased, was also present there. On account of the injuries sustained by Sukhuram he fell down. Hearing the commotion, PW-1 Ramlal & PW-2 Mukundlal came on the scene of occurrence and saw that Sukhuram is lying in unconscious position. The accused was standing holding Lathi in his hand. On enquiry, Raturam informed that Sukhuram is in the habit of quarrelling with him. Thereafter, Sukhuram succumbed to the injuries sustained by him. The report Ex.P-1 was lodged in Police Station: Bagicha. Merg intimation Ex.P-2 was also given based on which Crime No.43/99 was registered.

After usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jashpurnagar, who in turn, committed the case to the Sessions Judge, Raigarh, from where learned Additional Sessions Judge, Jashpurnagar, received the case on transfer for trial.

In order to establish charge against the accused, the prosecution has examined eight witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the incriminating material appearing against him in the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing respective counsel for the parties, convicted and sentenced the accused as aforementioned.

आदेश पत्रक (पूर्वानुबद्ध)

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We have heard Mr. J.D. Bajpayee, learned counsel for the appellant and Mr. D.K. Gwalre, learned Deputy Govt. Advocate on behalf of the State/respondent.

Mr. Bajpayee has not disputed the homicidal death of Sukhuram. Apart from that, PW-3 Somari Bai, who was present on the scene of occurrence, has stated in her evidence that the accused assaulted her husband with Lathi as a result of which he fell down and succumbed to the injuries sustained by him. Dr. Christ Dular Bakhla (PW-7) conducted post-mortem on the body of the deceased. He has stated in his evidence that there were two injuries on the body of Sukhuram, one was lacerated wound on the left parietal region and there was contusion on the chest. On opening the head, clotted blood was found present. All the injuries were anti-mortem in nature and the cause of death was haemorrhage and neurogenic shock. His report is Ex.P-7. Therefore, in view of the above ocular and medical evidence, it is established that the death of Sukhuram was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, PW-3 Somari Bai wife of the deceased, who was present at the scene of occurrence at the time of the incident, has stated in her evidence that on the fateful day at about 3 p.m. both the brothers i.e. the accused and the deceased were in drunken condition, as their goats were eaten away by some wild animal, the accused asked her husband as to why he had not come to the house, had he came earlier, the goats could have been saved, on which both the brothers started quarrelling and the accused

मामला क्रमांक G.A. 3390/99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

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assaulted the deceased with Lathi on his head, chest & legs, as a result of which her husband became unconscious and fell down. The above evidence of this witness (PW-3) is corroborated by the medical evidence of PW-7 Dr. Christ Dular Bakhla, which has been mentioned earlier. Therefore, involvement of the accused in the crime in question is established.

Learned counsel for the appellant argued that from the evidence of PW-3 Somari Bai it is evident that the quarrel started at the spur of the moment. The accused and the deceased were brothers and there was no intention of the accused to cause the death of his brother. Therefore, the offence does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, Mr. Gwalre, learned Deputy Govt. Advocate supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the parties, we have perused the evidence available on record. PW-3 Somari Bai has stated in her evidence that on the fateful day, the accused and the deceased were in drunken condition, on a petty matter the quarrel started between the brothers and in that process the accused assaulted the deceased on his head with Lathi. From the above facts, it cannot be inferred that the accused attacked the deceased with intention to cause the death. There was no animosity between the two brothers. The quarrel started all of a sudden. The above facts show that the accused had no intention to cause the death of the deceased. However, it can safely be inferred that the manner in which the accused assaulted the deceased with

आदेश पत्रक (पूर्वानुबद्ध)

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Lathi on is head, the accused had the knowledge that by assaulting with Lathi on head he may likely to cause death. In the circumstances, conviction of the accused and the sentence imposed upon him under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal of the appellant partly succeeds and the same is partly allowed. Conviction and sentence imposed upon the appellant under Section 302 of the I.P.C. are set aside and he is acquitted of the said charge, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for seven years. It is stated that the accused is in detention since 28-5-1999, thereby he has already served the sentence imposed upon him. Therefore, the accused/appellant be set at liberty forthwith, if not required in any case.

In view of this order, M.(Cri.)P. No.2477/2006 stands disposed of.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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P.T.O.